IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.662 OF 1996

Ajit Shamgonda Patil, .. Petitioner

Vs

Usuf Karimjamadar -D/H

a) Badasha Usuf Jamadar and ors .. Respondents

Mr N.J.Patil, for the petitioner.

Mr D.A.Patil, AGP for the respondent-State.

Mr Dilip Bodke, for respondent no.1(a) and 1(b)

Mr P.R.patil for respondent no.7(a) and 7(b)

CORAM : D.B.BHOSALE,J.

DATE : 5th October, 2004.

ORAL ORDER :

1. The petitioner has impugned the order dated 24.10.1995 passed by the Addl.Commissioner, Pune Division, Pune, by which the revision application filed by the petitioner was dismissed and the order dated 22.5.1982 of the Tahasildar passed in Darkhast No.214 of 1978 was confirmed.

2. The learned Civil Judge, Jr.Dn., Ichalkarnji sent Regular Darkhast No.214 of 1978 for effecting the partition of the decree under section 54 of the Code of Civil Procedure to the Collector, Kolhapur, who, in

turn, sent it to the Tahasildar for carrying partition as per the judgment and order passed in Regular Civil Suit no.66 of 1949.

3. The petitioner was not party in the suit. Original defendant nos 1,2 and 8 had inducted the petitioner as a tenant in Gat No.1261 admeasuring 58 Ares during pendency of the suit. He subsequently purchased the said property being a deemed purchaser under section 32 and 32G of the Bombay Tenancy and Agricultural Lands Act,1948. Defendant nos 1 and 2 had earlier sold land admeasuring 1 Hector 9 Ares from Gat No.1221 to original defendant no.3, now represented by respondent no.7(a) & (b). The suit was filed by Usuf Karim Jamdar, who is now represented by respondent no.1A and 1B for partition and separate possession of his share. As per the decree he is entitled for share in the suit lands bearing Gat Nos 1261 and 1221. In execution proceedings, the petitioner was joined as party in which he filed an application dated 28.5.1982 raising objections and requesting equitable partition of the lands in dispute by allotting the land purchased by him under section 32G to the share of defendant nos 1,2 and 8. It is apparent from the facts of the case that the defendant nos.1 and 2 had transferred excess land to the petitioner and respondent no.7(a) and 7(b) than what they were entitled

to in the partition. Against the backdrop of these facts, Mr Patil, learned counsel for the petitioner, submitted that the petitioner, being transferee during pendency of the partition suit, can appear in such proceedings and claim an equitable partition even though he was not a party to the suit in civil court. He further submitted that when the petitioner was inducted and declared deemed purchaser under section 32 of the B.T.& A.L.Act, defendant nos 1,2 and 8 did not keep him informed about the pendency of the suit. In support of his submissions, he placed heavy reliance on the Judgment of the Apex Court in **Khemchand Shankar Choudhary and another Vs. Vishnu Hari Patil and others, AIR 1983 SC 124** and the Judgment of this Court in **Dahya Lala V. Rasul Mohamed Abdul Rahim, 1962 The Bombay Law Reporter 328**. He further submitted that the partition effected by the Tahasildar and affirmed by the Commissioner is not equitable and consistent with the directions of this Court given while disposing of the Second Appeal.

4. Without entering into a controversy as to whether the application dated 28.5.1982, filed by the petitioner before the revenue authority, who was carrying the partition in pursuance of the judgment and decree in the civil suit, was maintainable or not and keeping in view

that the decree holder is awaiting the fruits of the decree since last about 35 years, I endeavoured to go through the orders passed by the revenue authorities in these proceedings and the other material placed before me including order of this Court in Second Appeal No.450/1961 to find out whether partition carried was equitable. It is clear from the facts of the case, and that has not been disputed by the petitioner, that the defendant nos 1 and 2 sold more land than what they were entitled for in the partition decree. It is further clear that the petitioner was inducted in the suit property as tenant in 1953-54 i.e. after filing of the suit in 1949. Keeping this in view, I examined the submissions of Mr Patil, learned counsel for the petitioner.

5. Before I proceed further, it would be advantageous to quote relevant observations made by this Court while disposing of Second Appeal No.450/1961 filed by defendant no.3, who is now represented by respondent nos 7(a) and 7(b). The relevant observations read thus:

> "The defendant no.3 also contended before the lower Courts that in any event the property should be so equitably partitioned that survey no.305/1 should be allotted to the share of

> defendant no.1, so that ultimately the possession of the defendant no.3 should not be disturbed. As the trial Court had found in favour of defendant no.3, it did not consider it necessary to go into the question of equitable partition. The District Court thought that it was not possible to partition the property in such a way that survey no.305/1 be allotted to the shares of the defendant nos 1 and 2, so as to continue the possession of the defendant no.3. This was not the ground that survey no.305/1 was the major item in the property of Latif. It may be that it is not possible to allot survey no.305/1 to the share of the defendant nos 1 and 2 alone. I think it is just and equitable that as far as possible as much share as is possible of survey no.305/1 should be allotted to the shares of the defendant nos 1 and 2, so that ultimately the defendant no.3 may be disturbed as little as possible."

Survey No.305/1 referred to in the above paragraph is now Gat No.1221. It is clear from the observations quoted above that as far as possible as much share as is possible of Survey No.305/1 should be allotted to the share of defendant nos 1 and 2 so that ultimately

defendant no.3 may be disturbed as little as possible.

5.1 If we now look at the partition effected by the Tahasildar, it is apparent that it was consistent with the order of this Court in the aforesaid judgment dated 12.9.1968. The Revenue Authority were left with no alternative but to allot Gat No. 1221,i.e. S.No.305/1 to defendant no.3 with further directions to him to compensate the petitioner.

6. In so far as the right of the petitioner is concerned, the law is now well settled that if the tenancy is created during pendency of the suit, it is not open for such tenant at the time of passing of the final decree to raise the contention that he was a tenant of the suit land. This principle is settled by the Apex Court in 2003 (1) All M.R.765 (S.C.) in Venkatrao Anantdeo Joshi & Ors Vs. Sau.Maltibai and ors. In the present case, admittedly the petitioner was inducted as tenant in 1953-54 whereas suit was filed in 1949. Therefore, it was hit by doctrine of lis pendens.

7. To my mind, the revenue authorities, i.e. Tahasildar and Addl. Commissioner, while effecting the partition, considered the matter in proper perspective and effected the equitable partition, which cannot be

faulted. Having regard to the reasons recorded in the order impugned, it cannot be said that the partition carried is inconsistent with the observations made by this Court while disposing of the Second Appeal. Considering that and keeping in view the overall facts and circumstances of the case, the partition effected by the Revenue Authorities, in my opinion, was equitable and deserves no interference by this Court in its supervisory jurisdiction under Article 227 of the Constitution. The writ petition, therefore, fails and is dismissed as such.

(D.B.Bhosale, J.)